

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.16 OF 1988**

Balwantsingh Tarasingh Bagga
Vs.

...Appellant

Dagu Bala Kamod
(since deceased through L.Rs.)

...Respondents

Ms A.R.S.Baxi for the Appellant
Mr.S.M.Gorwadkar for the Respondent Nos.3A to 3C.

**CORAM: A.S.OKA, J.
DATED: MARCH 31,2005.**

P.C.:

1. Heard Advocate for the Appellant. The suit filed by the Appellant was dismissed by the trial Court. The suit was for claiming the right of way through the property held by the Defendant Nos.5 to 7 and right to use the water in well which is in possession of the Defendant Nos.5 to 7. A prayer was also made for removal of encroachment allegedly made by Respondent Nos.5 to 7 on area of 20 gunthas allegedly owned by the Appellant-Plaintiff. The Trial Court dismissed the suit. The Appellate Court partly allowed the Appeal preferred by the Appellant and passed a decree for perpetual injunction restraining the original Defendant Nos.5 to 7 from obstructing the Appellant-Plaintiff from taking out water from the well.

2. The learned Counsel for the Appellant submitted that the sale deed in favour of the Appellant itself shows that the Appellant became owner of area of more than 3 acres and 10 gunthas. She submitted that the revenue record supports the case of the Appellant. She submitted that if right of way

was denied to the Appellant, then the Appellant will be prevented from enjoying the right to draw water from the well which stands on City Survey No.337/1.

3. The Courts below have recorded a concurrent finding of fact that the title of the Appellant is confined to the area of 3 acres and 10 gunthas. That is the reason why the prayer for removal of encroachment was rejected by the Courts below. The Appellate Court has considered the admissions given by the Appellant-Plaintiff in his cross examination. No fault can be found with the findings recorded by the Courts below.

4. As regards drawing of water from the well is concerned, the operative part of the decree read thus :

"...The defendant Nos.5 to 7 are hereby restrained by perpetual injunction from obstructing plaintiff in taking water from the well, standing in S.No.337/1 for the purpose of raising crop in his land of 3 acres and 10 gunthas out of S.No.337/1. Parties to bear their costs throughout."

5. In view of the said decree the original Defendant Nos.5 to 7 cannot prevent the Appellant from approaching the well for the purpose of drawing the water. If obstruction is made by Defendant Nos.5 to 7, the Appellant can always enforce the decree passed in terms of Clause No. (iii) of the operative part of the decree of the Appellate Court.

6. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.